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FILED
MAY 25 1929
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1928

No. [redacted] Original

STATE OF NEW JERSEY,

Plaintiff,

against

STATE OF NEW YORK AND THE CITY OF NEW YORK,

Defendants.

NOTICE AND MOTION OF STATE OF NEW YORK FOR LEAVE TO FILE ANSWER TO BILL OF COMPLAINT.

HAMILTON WARD,
Attorney-General,
Solicitor for defendant State of New York,
Capitol, Albany, N. Y.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1928.

No. 20, Original.

STATE OF NEW JERSEY,
Plaintiff,
against
STATE OF NEW YORK and THE CITY OF NEW YORK,
Defendants.

NOTICE AND MOTION BY DEFENDANT STATE OF NEW YORK FOR LEAVE TO FILE ANSWER TO BILL OF COMPLAINT.

To:

HONORABLE WILLIAM A. STEVENS, Attorney General, Trenton, N. J.

HONORABLE DUANE A. MINARD, Assistant Attorney General, Trenton, N. J., Solicitors for the Plaintiff.

PLEASE TAKE NOTICE That at the opening of the Supreme Court of the United States on Monday, the 27th day of May, 1929, the defendant State of New York will present motion for leave to file its answer to the bill of complaint herein, a copy of which is herewith submitted.

STATE OF NEW YORK,
By:
HAMILTON WARD, *Attorney General*,
Solicitor for defendant State of New York.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1928.

No. 20, Original.

STATE OF NEW JERSEY,
Plaintiff,
against
STATE OF NEW YORK and THE CITY OF NEW YORK,
Defendants.

MOTION.

The defendant State of New York by Hamilton Ward, Attorney General, its solicitor, moves the Court for leave to present and file its answer to the bill of complaint herein which answer is herewith submitted.

STATE OF NEW YORK,
By:
HAMILTON WARD, *Attorney General,*
Solicitor for defendant State of New York.

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CHARLES ELMORE CROPLEY
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IN THE

Supreme Court of the United States

October Term, 1928

No. [redacted] Original

STATE OF NEW JERSEY,

Plaintiff,

against

STATE OF NEW YORK AND THE CITY OF NEW YORK,

Defendants.

ANSWER OF DEFENDANT, STATE OF NEW YORK, TO THE BILL OF COMPLAINT

HAMILTON WARD,
Attorney-General,
Solicitor for defendant State of New York,
Capitol, Albany, N. Y.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1928.

No. 20, Original.

STATE OF NEW JERSEY,
Plaintiff,

against

STATE OF NEW YORK and CITY OF NEW YORK,
Defendants.

ANSWER OF DEFENDANT, STATE OF NEW YORK, TO THE BILL OF COMPLAINT.

TO THE HONORABLE THE CHIEF JUSTICE OF THE UNITED STATES AND THE CHIEF JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Now comes the defendant, State of New York, by Hamilton Ward, Attorney-General, its Solicitor, and reserving to itself all right of exception to said bill of complaint for its answer thereto alleges, avers and says as follows:

First: That it is without knowledge as to all and singular the allegations contained in paragraph numbered "I" of the bill of complaint except as to so much thereof as alleges or purports to allege that the plaintiff is one of the states of

the United States of America having its capital and seat of government at the City of Trenton, Mercer County, New Jersey, and the defendant admits that the defendant, State of New York, is one of the states of the United States of America having its capital and seat of government in the City and County of Albany, New York, and exercises the powers and duties of sovereignty within its territorial limits under and by virtue of its constitution; and the defendant State of New York admits that the defendant the City of New York is a body politic, incorporated, organized and existing under its ancient charter and by virtue of the laws of the State of New York under which it exercises powers of local administration and government as a political subdivision of said State and that it has its seat of government in the Borough of Manhattan in the City, County and State of New York.

Second: The defendant admits that this action is brought in the Supreme Court of the United States in the exercise of the original jurisdiction of said Court on the claimed ground that it is an action in equity relating to an alleged controversy between two states of the United States and also between a state of the United States and a citizen of another state.

As to the Subdivision of the Bill of Complaint Numbered "III" the Defendant Avers and Alleges as Follows:

Third: That it admits the allegations contained in paragraph numbered "5" of the bill of complaint.

Fourth: That it is without knowledge as to all and singular the allegations contained in that

paragraph of the bill of complaint which is numbered "6" and, therefore, denies the same.

Fifth: That it denies all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "7" except that it admits that in the State of New York the Delaware River has certain tributaries some of which are the Neversink River, Willowemoc River, Beaver Kill, East Branch and Little Delaware River; and the defendant further alleges that there are many other tributaries of the Delaware River which, together with those named in the bill of complaint, drain a total area in the State of New York of two thousand three hundred eighty-nine miles, all of which drainage area constitutes the watershed of the Delaware River within the State of New York.

Sixth: That it is without knowledge as to all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "8" and, therefore, denies the same.

Seventh: That it is without knowledge as to all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "9" and, therefore, denies the same, except that it admits so much thereof as alleges or purports to allege that the Delaware River from its mouth northwardly to the City of Trenton, N. J., is navigable and that said river in times of war may be an inland waterway necessary for the common defense of the nation.

Eighth: That it is without knowledge as to all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "10" and, therefore, denies the same.

Ninth: That it is without knowledge as to all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "11" and, therefore, denies the same, except that the defendant admits that portion of said paragraph which alleges or purports to allege that the Delaware River northward from the City of Trenton to Port Jervis, N. Y., is not a tidal stream.

Tenth: That it denies all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "12".

Eleventh: That it is without knowledge as to all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "13" and, therefore, denies the same.

Twelfth: That it is without knowledge as to all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "14" and, therefore, denies the same.

Thirteenth: That it is without knowledge as to all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "15" and, therefore, denies the same.

Fourteenth: That it is without knowledge as to all and singular the allegations contained in that paragraph of the bill of complaint numbered "16," and, therefore, denies the same, except so much thereof as alleges or purports to allege that the common law rule with respect to the rights of riparian proprietors along, in and to waters and water courses was adopted and is in force in the State of New York and as to that allegation the defendant avers and alleges that the State of New York did not, either as a colony or as one of the

states of the United States of America adopt in its entirety the common law rule with respect to the rights of riparian proprietors along, in and to waters and water courses, but that as to the beds of certain of its rivers including the Mohawk, portions of the Hudson above tide water and the St. Lawrence Rivers, the Great Lakes and their connecting waterways and as to the beds of certain inland lakes the title thereof is in the State of New York.

Fifteenth: That it is without knowledge as to all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "17" and, therefore, denies the same.

Sixteenth: That it is without knowledge as to all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "18" and, therefore, denies the same.

Seventeenth: That it denies all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "19" and, therefore, denies the same, except that it admits that the State of New York through its Water Power and Control Commission has approved, with modifications, the plan of the City of New York for its proposed new supply of water to be derived from the tributaries of the Delaware River mentioned in said paragraph numbered "19" of the bill of complaint.

Eighteenth: That it is without knowledge as to all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "20" and, therefore, denies the same.

Nineteenth: That it is without knowledge as to all and singular the allegations contained in that

paragraph of the bill of complaint which is numbered "21" and, therefore, denies the same.

Twentieth: That it is without knowledge as to all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "22" and, therefore, denies the same.

Twenty-first: That it is without knowledge as to all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "23" and, therefore, denies the same.

Twenty-second: That it is without knowledge as to all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "24" and, therefore, denies the same.

Twenty-third: That it is without knowledge as to all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "25" and, therefore, denies the same.

Twenty-fourth: That it is without knowledge as to all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "26" and, therefore, denies the same.

Twenty-fifth: That it is without knowledge as to all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "27" and, therefore, denies the same.

Twenty-sixth: That it is without knowledge as to all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "28" and, therefore, denies the same.

Twenty-seventh: That it is without knowledge as to all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "29" and, therefore, denies the same.

Twenty-eighth: That it denies that the utilization by the City of New York of the waters, located within the boundaries of the State of New York, mentioned in the bill of complaint will deprive the Delaware River within the territorial limits of the State of New Jersey of the necessary supply of oxygen and water for flushing, and the defendant further denies that the said utilization of said waters by the City of New York will injuriously affect the fishing industry of the plaintiff and its citizens.

Twenty-ninth: That it is without knowledge as to all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "31".

Thirtieth: That it denies that the utilization of waters by the City of New York from the tributaries of the Delaware River located within the boundaries of the State of New York will substantially diminish the flow of water in that river during the summer months, and the defendant further denies that said utilization of said waters by the City of New York will permanently and irreparably injure the property and vested rights of the plaintiff and its citizens or that it will destroy the natural advantages of the Delaware valley.

Thirty-first: That it is without knowledge as to all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "33" and, therefore, denies the same, except that it denies that portion thereof which alleges or purports to allege that the utilization by the City of New York of the waters, within the boundaries of the State of New York, mentioned

in the bill of complaint will destroy the opportunity for the feasible commercial development of water power on the Delaware River, including that within the territorial limits of the plaintiff.

Thirty-second: That it is without knowledge as to all and singular the allegations contained in that paragraph of the bill of complaint numbered "34" as alleges or purports to allege that with the development of water power it is practicable to provide locks and slackwater navigation of a depth of from twelve to fourteen feet from tidewater at Trenton, New Jersey, to the mouth of the Neversink River at Port Jervis, New York.

Thirty-third: That it denies that the utilization by the City of New York of the waters, within the State of New York, mentioned in the bill of complaint will so reduce the navigable capacity of the Delaware River as to destroy the feasibility of developing the same for navigation.

Thirty-fourth: That it denies each and every allegation contained in that paragraph of the bill of complaint which is numbered "35", except that it admits that portion thereof which alleges or purports to allege that there will be a constantly increasing demand for water by the defendant, the City of New York.

Thirty-fifth: That it is without knowledge as to all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "36" and, therefore, denies the same.

Thirty-sixth: That it denies all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "37", except that it admits that the City of New York has made investigations within the State of New York for

additional sources for a water supply for said city.

Thirty-seventh: That it denies all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "38".

Thirty-eighth: That it denies all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "39".

Thirty-ninth: That it is without knowledge as to all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "40" and, therefore, denies the same.

Fortieth: That it denies all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "41", except that the defendant admits that the utilization by the City of New York of the waters, within the State of New York, mentioned in the bill of complaint is not intended by the defendant city for water power alone as is alleged in said paragraph.

Forty-first: That it is without knowledge as to all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "42" and, therefore, denies the same, excepting that the defendant denies that portion thereof which alleges or purports to allege that the proposed utilization by the City of New York of the waters, within the State of New York, mentioned in the bill of complaint will deprive plaintiff and its citizens of water which they are legally entitled to for use for domestic, potable and industrial purposes.

Forty-second: That it denies all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "43".

Forty-third: That it denies all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "44".

Forty-fourth: That it denies all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "45".

Forty-fifth: That it denies all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "46".

Forty-sixth: That it denies all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "47".

Forty-seventh: That it denies all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "48".

Forty-eighth: That it denies all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "49".

Forty-ninth: That it denies all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "50".

Fiftieth: That it denies all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "51".

Fifty-first: That it denies all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "52".

Fifty-second: That it denies all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "53".

Fifty-third: That it denies all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "54".

Fifty-fourth: That it denies all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "55".

Fifty-fifth: That it denies all and singular the allegations contained in that paragraph of the bill of complaint which is numbered "56".

Fifty-sixth: The defendant, State of New York, further answering expressly denies each and every allegation in said bill of complaint contained not hereinbefore specifically admitted or controverted.

Fifty-seventh: The defendant, State of New York, further answering the bill of complaint herein alleges and avers that in approving of the plan of the defendant, The City of New York, to utilize the waters within the State of New York mentioned in the bill of complaint, this defendant has required that the said City of New York make adequate provision for the payment of any damages which may be occasioned by or result from the execution of said plan. The defendant, State of New York, further alleges that the defendants, The City of New York and The State of New York, are financially able to pay any damages which may be occasioned by or result from the execution of the plan of the City of New York to utilize for water supply purposes the waters mentioned in the bill of complaint herein, and that there is ample jurisdiction in the courts to render judgment for any such damages.

Fifty-eighth: The defendant, State of New York, denies that the complainant is entitled to the relief or any part thereof as in said bill of complaint demanded and this defendant states

that said bill of complaint is inadequate and insufficient in law and does not on its face entitle the said complainant to the relief or any part thereof prayed for in said bill of complaint.

Wherefore, this defendant prays that the bill of complaint be dismissed with costs and disbursements to this defendant.

STATE OF NEW YORK,
By HAMILTON WARD,
Attorney General,
Its Solicitor,
Office & P. O. Address,
The Capitol, Albany, N. Y.

ALBERT J. DANAHER,
Assistant Attorney General,
Of Counsel.

FILED
MAY 22 1929
CHARLES ELMORE CROPLEY
CLERK

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. [redacted], Ori[redacted] 12 5 9

STATE OF NEW JERSEY,
Plaintiff,

vs.

STATE OF NEW YORK AND THE CITY OF NEW YORK,
Defendants.

IN EQUITY

MOTION FOR LEAVE TO FILE.

Comes now The City of New York, by its Corporation Counsel, and asks leave of this Court to file the annexed and herewith submitted memorandum upon the hearing and determination of the application of the State of New Jersey for leave to file a bill of complaint in a cause in equity to be entitled as above.

ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for The City of New York.

May 13, 1929

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. Original

STATE OF NEW JERSEY,
Plaintiff,

against

STATE OF NEW YORK and THE CITY OF NEW YORK,
Defendants.

MEMORANDUM ON BEHALF OF THE CITY OF NEW YORK WITH REGARD TO THE APPLICATION OF THE STATE OF NEW JERSEY FOR LEAVE TO FILE A BILL OF COMPLAINT.

The City of New York, now and at all times hereafter saving to itself all and all manner of benefit by objection, exception or otherwise that can or may be taken to the many errors, uncertainties and imperfections in the plaintiff's proposed bill of complaint herein contained, submits itself and its interests, upon the plaintiff's application, to the protection of this Honorable Court, and prays, that, if the plaintiff's application be granted, such steps be taken and such orders be made by the Court as will expedite the speedy determination of all questions of fact and law that are and will be involved in the litigation.

Respectfully submitted,

ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for the proposed defendant,
The City of New York.

J. Joseph Lilly,
of Counsel.

FILE COPY

FILED
MAY 25 1929
CHARLES ELMORE CROPLEY
CLERK

In the Supreme Court of the United States

October Term, 1928

No. 3, Original.

1928

STATE OF NEW JERSEY,
Plaintiff,

against

STATE OF NEW YORK AND
THE CITY OF NEW YORK,
Defendants.

MOTION FOR LEAVE TO FILE ANSWER, FOR LEAVE TO WITHDRAW AND AMEND, AND ANSWER.

ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for the Defendant, The City of New York.

NEW YORK:
M. B. BROWN PRINTING & BINDING CO.,
37-41 Chambers Street.

1929

In the
Supreme Court of the United States

OCTOBER TERM—1928.

No. 20, Original.

STATE OF NEW JERSEY,
Plaintiff,

against

STATE OF NEW YORK and THE CITY OF NEW YORK,
Defendants.

Notice.

To:

Hon. WILLIAM A. STEVENS,
Attorney General of the State of New Jersey,

Hon. DUANE E. MINARD,
Assistant Attorney General of the State of New Jersey,

Solicitors for Plaintiff.

Hon. HAMILTON WARD,
Attorney General of the State of New York,
Solicitor for the Defendant, State of New York.

Sirs:

Please be advised that on Monday, May 27, 1929, the defendant, The City of New York, will apply to the Court for leave to file its answer herein, a copy of which is annexed hereto, and for the relief prayed for in the annexed motion.

Dated, May 25, 1929.

ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for the Defendant,
The City of New York.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM—1928.

No. 20, Original.

STATE OF NEW JERSEY,
Plaintiff,
against
STATE OF NEW YORK and THE CITY OF NEW YORK;
Defendants.

In Equity.

MOTION FOR LEAVE TO FILE ANSWER AND TO WITHDRAW AND AMEND SUCH ANSWER WITHOUT PREJUDICE TO OTHER PROCEEDINGS.

Comes now the defendant, The City of New York, by its Corporation Counsel and Solicitor, and shows as follows, to wit:

1. That pursuant to leave of this Court granted on the 20th day of May, 1929, the State of New Jersey has filed in this Court a bill of complaint against the defendants, the State of New York and The City of New York, praying that this Court issue its writ of injunction perpetually restraining and enjoining the defendants, the State of New York and The City of New York, from diverting or abstracting any waters from the Delaware River, and particularly from certain of its tributaries.

2. That the suit in equity of the State of New Jersey so permitted by this Court to be commenced, was docketed as number 20—Original, October Term, 1928, on the 22nd day of May, 1929.

3. That this Court's subpoena to answer the aforesaid bill of complaint was issued therefrom under date of May 21st, 1929, and was received by the defendant The City of New York, on May 23rd, 1929.

4. That by and as part of its aforementioned leave to the State of New Jersey to file its aforementioned bill of complaint herein, granted on the 20th day of May, 1929, as aforesaid, this Court directed that its process issue returnable Monday, May 27th, 1929, upon which day the defendants, the State of New York and The City of New York, are required thereby and by the aforementioned subpoena to answer.

5. The defendant herewith presents its answer to said bill of complaint and prays that its said answer be received and filed, and, because in the brief time allowed for its preparation it has not been possible, fully, adequately and formally, to set forth all of its defenses, prays that it be given leave to withdraw such answer and substitute in place thereof a more detailed amended or supplemental answer within 60 days from May 27th, 1929, but without prejudice otherwise to the expedition and speedy determination of this cause.

ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for the defendant,
The City of New York.

J. JOSEPH LILLY,
of Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM—1928.

No. 20, Original.

STATE OF NEW JERSEY,
Plaintiff,

vs.

STATE OF NEW YORK and THE CITY OF NEW YORK,
Defendants.

Answer of the Defendant, The City of New York.

TO THE HONORABLE THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Now, comes the defendant, The City of New York, by Arthur J. W. Hilly, its Corporation Counsel and its Solicitor herein and, reserving all manner of benefit by objection, exception or otherwise to the many defects, errors, insufficiencies, imperfections and discrepancies in the plaintiff's Bill of Complaint contained, for its answer to the said Bill of Complaint the defendant, The City of New York, respectfully shows to the Court and alleges as follows:

First—That it is without knowledge as to all and singular the allegations contained in that item or division of the Bill of Complaint which is designated "I.", except as to so much thereof as alleges or purports to allege that the plaintiff is one of the States of the United States of America having

its Capitol and seat of government at the City of Trenton in the State of New Jersey, and except as to the allegations contained in the paragraphs or sections thereof numbered respectively "2" and "3."

As to the item or division of the Bill of Complaint which is designated "III," the defendant, The City of New York, says:

Second—That it denies all and singular the allegations contained in those sections or paragraphs of the Bill of Complaint which are respectively numbered 12, 20, 21, 22, 30, 33, 34, 35, 36, 38, 39, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55 and 56.

Third—That it is without knowledge as to all and singular the allegations contained in those sections or paragraphs of the Bill of Complaint which are respectively numbered 6, 13, 14, 15, 17, 23, 24, 25, 26, 27, 28, 29 and 31, and therefore denies the same.

Fourth—That it denies so much of the allegations contained in that section or paragraph of the Bill of Complaint which is numbered "5" as allege or purport to allege that at the places within the State of New York where this defendant projects the detention and accumulation of surplus waters of the tributaries of the Delaware River, which are wholly within the State of New York, the said Delaware River or any of its said tributaries is an interstate stream.

Fifth—That it denies all and singular the allegations contained in that section or paragraph of the Bill of Complaint which is numbered "7," except that it admits that in the State of New York the Delaware River has tributaries, some of which are Neversink River, Willowemoc River, Beaver Kill, East Branch and Little Delaware,

and further shows that there are many other tributaries of the Delaware River in addition to those named in paragraph "7" of the Bill of Complaint, which, in all, drain a total area of 2,389 square miles wholly within the State of New York, all of which constitute the watershed of the Delaware River within the State of New York, exclusive entirely of the watersheds of the said Delaware River in the State of New Jersey and the State of Pennsylvania.

Sixth—That it denies all and singular the allegations contained in that section or paragraph of the Bill of Complaint which is numbered "8," except as to so much thereof as alleges or purports to allege that the said Delaware River is navigable for vessels of small draft from its mouth to the City of Trenton, New Jersey, and is as to certain portions thereof, used for the pursuits of fishing, hunting and pleasure.

Seventh—That it is without knowledge as to all and singular the allegations contained in that section or paragraph of the complaint which is numbered "9" and therefore denies the same, except as to so much thereof as alleges or purports to allege that from its mouth northwardly to the City of Trenton, New Jersey, the Delaware River is navigable for vessels of small draft and may in times of war be an inland waterway necessary for the common defense, and further shows that for the purposes of the common defense of the nation in times of war, the proposed plan of this defendant will render the said Delaware River more efficient for the purposes of the common defense.

Eighth—That it is without knowledge as to all and singular the allegations contained in that section or paragraph of the Bill of Complaint which is numbered "10" and therefore denies the same, except as to so much thereof as alleges or purports

to allege that the alleged proposed diversion in said section or paragraph of the Bill of Complaint mentioned will reduce at all times, or at any time, the channel within and adjacent to the said City of Trenton to the extent of one-half foot or more or to any appreciable extent, which it denies, and further shows that the navigable extent of the section of the Delaware River at and near the City of Trenton, New Jersey, will be substantially improved and benefitted by reason of the release of water as provided for by its plan, during the dry months of every year and on every dry day of every month. Defendant further avers that, because of the reduction in flood flow which will be brought about by the operation of its plan, the navigational conditions in the tidal section of the Delaware River will be still further benefited and that such benefit will be even more marked when and after the work on the new projected depth referred to by the plaintiff has been completed.

Ninth—That it denies all and singular the allegations contained in that sub-section or paragraph of the Bill of Complaint which is numbered "11" except as to so much thereof as alleges or purports to allege that from the City of Trenton, New Jersey, northward the Delaware River is not a tidal stream.

Tenth—That it is without knowledge as to all and singular the allegations contained in that section or paragraph of the Bill of Complaint which is numbered "16," and therefore denies the same, except as to so much thereof as alleges or purports to allege that the common law rule with respect to the rights of riparian proprietors has been adopted and applied with regard to certain bodies of water by and in the State of New York, and it denies that in the States of New Jersey, Pennsylvania and New York, so far as the Delaware

River is concerned, the common law with regard to the rights of riparian owners has been adopted and applied.

Eleventh—That it is without knowledge as to all and singular the allegations contained in that section or paragraph of the Bill of Complaint which is numbered "18," and therefore denies the same, except as to so much thereof as alleges or purports to allege that the City of Trenton, New Jersey, has a permanent adequate supply of suitable water from the Delaware River, and further shows that by the operation of the plan of this defendant, the said water supply of the City of Trenton will be greatly augmented and improved and that the projected operations of this defendant will in no way or manner injuriously or adversely affect the water supply of the said City of Trenton.

Twelfth—That it denies all and singular the allegations contained in that section or paragraph of the Bill of Complaint which is numbered "19," except as to so much thereof as alleges or purports to allege that this defendant will under authority of the State of New York at the earliest possible date complete plans and appropriate such funds as may be necessary for preliminary and construction work and proceed with all proper diligence to provide reservoirs, tunnels and aqueducts for its proposed new supply of water to be derived in part from the tributaries of the Delaware River mentioned in said paragraph or section of the Bill of Complaint.

Thirteenth—That it denies all and singular the allegations contained in that section or paragraph of the Bill of Complaint which is numbered "32," and further shows, that, by the operation of the plan of this defendant, the flow of the water in the Delaware River during the dry months of July, August, September and October will be greatly

augmented and improved and that the rights and interests, if any, of the plaintiff and its citizens and of all other States, governments and persons will be served and bettered thereby.

Fourteenth—That it denies all and singular the allegations contained in that section or paragraph of the Bill of Complaint which is numbered "37," except as to so much thereof as alleges or purports to allege that this defendant has made investigations within various parts of the State of New York for a suitable supply of water for itself and its inhabitants from streams and other bodies of water wholly within the State of New York.

Fifteenth—That it denies all and singular the allegations contained in that section or paragraph of the Bill of Complaint which is numbered "40," and therefore denies the same, except as to so much thereof as alleges or purports to allege that this defendant has not changed its water rates since 1856, and that in the year 1925 the operation of its water system yielded a surplus over the cost of operation for that year of approximately $800,000, and that in the year 1926 the operation of its water system yielded a surplus over the cost of operation for that year of approximately $1,000,000, which said surpluses amounting in all to approximately the sum of $1,800,000 are applicable to the reduction of the deficit occasioned by the operation of its water system during the preceding years, now amounting approximately to the sum of $5,000,000.

Sixteenth—That it denies all and singular the allegations contained in that section or paragraph of the Bill of Complaint, which is numbered "41", except as to so much thereof as alleges or purports to allege that the waters intended to be accumulated through the operation of the plan of

the defendant, The City of New York, are not intended by it for water power alone, and avers that such waters are primarily intended to be used for the water supply of the defendant, The City of New York and its inhabitants.

Seventeenth—That it is without knowledge as to all and singular the allegations contained in that section or paragraph of the Bill of Complaint which is numbered "42", and therefore denies the same, except as to so much thereof as alleges or purports to allege that the proposed utilization of the waters referred to in the plan of this defendant will deprive the plaintiff or its citizens of water to which they are legally entitled for domestic, potable, industrial or other purposes, which it denies.

Further answering and for a first defense, the defendant, The City of New York, further alleges:

Eighteenth—That the bill of complaint herein does not state facts sufficient to constitute a cause of action in equity, nor any matter of equity entitling the plaintiff to the relief prayed for or to any relief nor are the facts stated in the bill of complaint sufficient to entitle the plaintiff to any relief against the defendant.

Further answering and for a second defense, the defendant, The City of New York, further respectfully shows to the Court and alleges as follows:

Nineteenth—That at all of the times herein and in the bill of complaint mentioned the defendant, State of New York, was and is a Corporation Sovereign.

Twentieth—That at all of the times herein and in the bill of complaint mentioned the defendant,

The City of New York, was and is a municipal corporation existing under its ancient charters and the laws of the State of New York.

Twenty-first—In addition to the permanent population of the defendant, The City of New York, which totals upwards of six million persons, there is continuously within its borders a permanent transient population of 500,000 or more. On each working day there is an influx of a large commuter population from the neighboring states and surrounding region. The population to be supplied with water is therefore close to seven million. This total population is more than equivalent to the combined population of the cities of Chicago, Illinois; Philadelphia, Pennsylvania, and Detroit, Michigan, and is approximately twice the total population of the plaintiff. The defendant, The City of New York, is the largest city of the United States. Its growth has been rapid and continuous. The State and City of New York for the fiscal year ended June 30, 1928, paid more than 25 per cent. of the internal revenue taxes of the entire nation. The growth of the defendant, The City of New York, is certain to continue and the future necessities of this great population with respect to its water supply are of most vital importance. Its present available sources of water are sufficient to meet the requirements only until the year 1935 and provision for the future must immediately be made, else a shortage of water, with its attendant consequences, will be inevitable. Because of the magnitude of the constructions involved and by reason of the extent of the plan proposed, a period of at least ten years will be necessary before it can be entirely completed, and from six to eight years must elapse before any of the water contemplated to be secured from the Delaware area can be made available.

Twenty-second—In 1905 this defendant, in providing for its future water supply, undertook the

development of the present Catskill water system. On this undertaking it has expended more than $180,000,000 and has realized a supply of 600 million gallons daily. The growth of its population since the completion of these works has been such that the additional water thus made available will serve only until the year 1935. In this situation the defendant must again look to the future and the plan on which it has now embarked is the inevitable consequence of the great growth of its population, which is constantly being augmented by persons moving into its borders from all States of the Union.

Twenty-third—This defendant's present use of water approximates 137 gallons per person per day, which is a most reasonable and economical use. From time to time there have been agitations amongst its residents as to the advisability of installing a system of universal metering, but no action in this direction has been taken for the reason that such installation would result in a substantial increase in the cost of the water delivered and would effect no material saving in the quantity consumed. Consideration being given to the large permanent transient population always sojourning within The City of New York, as well as the great commuter population which on every working day includes 350,000 persons from the plaintiff State of New Jersey alone, the average daily per capita use for The City of New York does not exceed 125 gallons. Among the larger cities of the United States in which all or substantially all of the water outlets are metered, the daily use of water per person for the year 1928 was: Detroit, Michigan, 123 gallons; Cleveland, Ohio, 141 gallons; Milwaukee, Wisconsin, 128 gallons; Paterson, New Jersey, 126 gallons; Newark, New Jersey, 117 gallons; Jersey City, New Jersey, 133 gallons; Cincinnati, Ohio, 115 gallons. In the

fifteen cities of the United States of over 500,000 population, not including The City of New York, the latest available figures indicate that the average daily use of water is 164 gallons per capita per day and in 110 cities of 110,000 or more population, not including The City of New York, the daily average use is 140 gallons per person.

Twenty-fourth—In order to make provision for the future water supply necessities of the defendant City, its Board of Estimate and Apportionment, in 1921, directed the Board of Water Supply of this defendant to make examinations and studies looking toward the securing of the best and most economical sources of water supply. As a result of these studies, which embraced all of the reasonably located sources within the territorial jurisdiction of the State of New York, the said Board of Water Supply determined that those best adapted for the next increment of the supply were certain tributaries of the Delaware River, namely, Little Delaware, East Branch, Beaver Kill, Willowemoc and Neversink, together with a portion of the watershed of the Rondout, a tributary of the Hudson River, all of which are non-navigable waters and wholly located within the State of New York. This defendant's Board of Water Supply, under date of July 27, 1927, submitted its report and plan for the increment of the water supply of The City of New York to its Board of Estimate and Apportionment, and such report and plan were duly approved by the said Board of Estimate and Apportionment on January 12, 1928, and by the Water Power and Control Commission of the State of New York on May 25, 1929. This defendant is therefore in position to at once proceed with the development of this much needed project and enlargement of its water supply system.

Twenty-fifth—That this defendant has always recognized the basic and reciprocal rights both of the plaintiff and of the Commonwealth of Pennsylvania, to the use of a reasonable portion of the waters of the Delaware River, and has at all times sought to proceed in such manner as would be consistent with this equality of right. To this end, the Legislature of the State of New York, in 1923, at the instance of this defendant, authorized the appointment of Commissioners for the purpose of negotiating a three party compact between the plaintiff, the Commonwealth of Pennsylvania and the defendant State of New York, in regard to the waters of the Delaware River. In that same year legislation was adopted and Commissioners for this purpose were appointed by all of the said states. (In New York by Chapter 56 of the Laws of 1923; in New Jersey by Chapter 94 of the Laws of 1923; in Pennsylvania by Pamphlet Laws 448, Approved May 24, 1923.) The Commissions authorized under these several statutes, after a thorough study and examination of the entire situation, and after many conferences and upon advice of their counsel and engineers, on January 24, 1925, unanimously adopted and signed a form of compact relating to the use of the waters of this river by each of the said three States. This form of compact was promptly adopted by the Legislature of New York and signed by its Governor, being Chapter 177 of the New York Laws of 1925, but for reasons unknown to this defendant it did not come before the Legislature of the plaintiff. Because of the situation thus developed in New Jersey, the Legislature of Pennsylvania took no action.

Twenty-sixth—The Legislature of the plaintiff in 1926 authorized a second and new Compact

Commission and negotiations were thereafter resumed by it with the States of New York and Pennsylvania. This new Commission, with new counsel and new engineers, again studied the problem in great detail and, after many conferences with the Commissioners of the Commonwealth of Pennsylvania and of the State of New York, an unanimous agreement was again reached on January 13, 1927, when a second form of compact was duly executed by such Commissioners. This compact was promptly adopted by the Legislature of New York and signed by the Governor, being Chapter 682 of the New York Laws of 1927. The Legislature of the plaintiff, in 1927, for reasons unknown to this defendant, took no action, and neither was action either in affirmation or negation had by the plaintiff during the 1928 and 1929 sessions of its Legislature. Because of this lack of interest and activity on the part of the Legislature of the plaintiff, the Legislature of the Commonwealth of Pennsylvania did not proceed.

Twenty-seventh—The Delaware River is one of the largest of the streams along the eastern seaboard of the United States. Rising in the highlands of New York and Pennsylvania, it flows toward the south and empties into Delaware Bay. Along its length it constitutes the State boundary line between New York and Pennsylvania and between New Jersey and Pennsylvania. Down to the Delaware State line it drains an area of watershed aggregating 10,444 square miles, of which total 6,076 square miles are within the Commonwealth of Pennsylvania, 1,979 within the jurisdiction of the plaintiff and 2,389 within the confines of the defendant, the State of New York. The average flow of this river at the Delaware state line is upwards of 12,000 million gallons daily, a quantity sufficient to provide for the needs of a population practically equal to that of the entire United

States. This defendant now plans to use only 600 million gallons daily of this great volume of water which now merely flow to waste. The plan of this defendant consists in providing five great reservoirs in which are to be stored the flood waters which come into being within the State of New York upon an area of 610 square miles of the southern slopes of the Catskill Mountains. This area of 610 square miles is a part of the total of 2,389 square miles, within the territorial confines of the State of New York, which drain into the channel of the Delaware River. Each of the reservoirs proposed to be constructed will be entirely within the State of New York and each will be more than 30 miles from the channel of the Delaware River where it constitutes the boundary between the State of New York and the Commonwealth of Pennsylvania. During the winter season, on the high altitudes of the Catskill Mountains, the precipitation is accumulated in the form of ice and snow and with the coming of spring this congealed moisture is turned into water and flows in great volume into the channel of the Delaware River and thence into the Atlantic Ocean. In thus flowing these flood waters are of no practical use or benefit at any point along the river and are absolutely lost and wasted. The essence of the plan of this defendant consists in conserving these flood waters by storing them in the reservoirs to be provided. In this manner the plan will benefit the Delaware River because it will cause the floods of the future to be lower and therefore less damaging in their effects. The plan of this defendant, however, goes still further, because, in addition to storing these flood waters for its own use it will also store a sufficient additional quantity for the specific purpose of increasing and augmenting the flow in the Delaware River during every dry season and on every dry day of every year. The quantity of water

which this defendant will store and then release for this purpose is exactly that which was agreed upon by the Compact Commissioners of the plaintiff, namely: at all times during the months of July, August, September and October, there will be released from storage a reserve flow equal to forty-five hundredths (0.45) of a cubic foot per second for each square mile of drainage area above the point of storage. During the remainder of the year such reserve flow will always be maintained on such days as the flow from the drainage area above the point of storage is less than forty-five hundredths (0.45) of a cubic foot per second for each square mile of drainage area above the point of storage. The quantity of the reserve flow so to be released is substantially greater than the flow which would normally occur during each dry season on the area included in the plan and, in consequence, the flow in the Delaware River will always be augmented and increased during every dry season and on every dry day.

Twenty-eighth—By reason of the reduction of the flood flows and because of the release of water as above set forth, the flow conditions along all parts of the Delaware River will be bettered and improved, and no injury or damage will be done to any state, municipality, person or property. The proposed plan of this defendant will modify the flow in the Delaware River in only two particulars, as follows:

(1) It will cause the flow to be increased and made more uniform and regular during all dry seasons and on all dry days.

(2) It will cause the flood stages to be slightly reduced.

Because of the conditions which the operation of this defendant's plan will thus bring about, the

entire valley of the Delaware will be improved and benefited in the following particulars:

(a) Navigational conditions will be improved at all seasons of the year.

(b) Conditions under which water power may be developed will be rendered better and more stable.

(c) The sanitary and potable quality of the water in the river will be bettered and improved.

(d) The water taken directly from the river for municipal supplies will be made better, safer and more usable.

(e) The conditions for fishing, for recreation and for pleasure will be improved and made more attractive.

(f) The more regular and more uniform flow which will obtain in the river will benefit and render more stable the oyster business as well as every other industry along the entire river.

Twenty-ninth—Everything which this defendant plans to do is in accord with the findings of each of the commissions, appointed by and acting for the States of New Jersey, New York and Pennsylvania, and this defendant respectfully refers to Chapter 682 of the New York Laws of 1927 and Chapter 177 of the New York Laws of 1925, which contain the two forms of compact adopted and concurred in by the commissioners of the plaintiff and of the States of New York and Pennsylvania.

Thirtieth—In the period of six years from 1923 to 1929, during which this defendant unsuccessfully sought the completion and final consummation of an interstate compact between the States of New Jersey, New York and Pennsylvania, the two authorized and responsible commissions representing the three interested States, supported by

all of their counsel and engineering advice, did unanimously agree on principles, limitations and restrictions under which each of the three States might proceed to develop and use a reasonable share of the water from the areas tributary to the Delaware River. The plan under which this defendant now proposes to proceed is squarely predicated on these principles, limitations and restrictions, and this defendant will always operate its proposed plan in such manner as to completely comply therewith. The defendant, moreover, is likewise and in the same manner bound, under the laws of the State of New York, as well as under the terms of its aforementioned authorization from the Water Power and Control Commission of the defendant, the State of New York.

Thirty-first—Because of the six years which have elapsed since these compact negotiations were instituted, the need for this defendant to proceed with its plan has now become so urgent and pressing that it can no longer delay in proceeding without great risk to the future prosperity, health and even existence of its citizens and residents. It has sought to compose this matter in every reasonable and honorable way, but has been prevented by causes beyond its control and outside its knowledge.

Thirty-second—Practically all of the sites feasible for the development of water power on the watershed of the Delaware River are located within the territorial confines of the States of New York and Pennsylvania. Only a small portion of the possible total which may be developed is situated within the territorial limits of the plaintiff. All of the power possibilities along the channel of the Delaware River below Tri-State Rock are within the joint jurisdiction of the plaintiff and the Commonwealth of Pennsylvania, which by their com-

pact of 1783 bound themselves to keep the Delaware River forever open as a public highway and until the said compact of 1783 is abrogated or modified, neither right nor authority exists for the construction of any dam across the channel of the Delaware River, thus rendering impossible the development of the Delaware River for water power purposes by the plaintiff.

Thirty-third—The waters of the tributaries of the Delaware River which rise within the territorial confines of the State of New York flow into the channel of the Delaware River in clean, wholesome and sanitary condition. Such pollution as the plaintiff in its bill of complaint refers to, if any such there be, originates from sources within its own boundaries and from other sources outside the State of New York and there is no obligation upon this defendant to maintain the waters which originate wholly within the State of New York in a clean and wholesome condition so that they may serve to dilute and remove and wash away any pollution for which it is not responsible.

Thirty-fourth—That the doctrine of riparian rights alleged in paragraph 16 of the Bill of Complaint has not, as relating to the Delaware River, been in the past, nor is it now, the rule and practice of the plaintiff with respect to the waters of said river, for the plaintiff within its own territory and under the enactments of its Legislature has sanctioned the diversion of water from the Delaware River for the purposes of the Morris and Essex Canal and for the purposes of the Delaware and Raritan Canal, which latter operation is still in daily use and practice and diverts and abstracts approximately 150 cubic feet per second of water for nine or more months in each year and always during every day of every dry season. The plaintiff thus constantly disregards its alleged doctrine

of riparian rights as to this interstate river and at the same time seeks to deny to this defendant the reasonable use of any part of the waters of its tributaries. This diversion, as now and for many years continually practiced by the plaintiff, moreover, makes no compensation in kind, while the plan of the defendant is so conditioned as to improve the flow in the Delaware River at all times and will thus cause no damage, but will, on the contrary, confer benefits and improve conditions. The Commonwealth of Pennsylvania recognizes the same rule with respect to the waters of this river as does the plaintiff. The canal paralleling the Delaware River from Easton to Philadelphia in the State of Pennsylvania has, under the sanction of that Commonwealth, long diverted and used the waters of this river. During the dry season this canal often intercepts practically the entire flow of the Lehigh River, one of the largest tributaries of the Delaware, with a drainage area of 1,370 square miles. The rule of practice applicable to the interstate waters of the Delaware River is not that limited and defined in paragraph 16 of the Bill of Complaint as the riparian doctrine, but that of reasonable use, employment and appropriation.

Thirty-fifth—In case the operation of its plan should, in any now unforeseen case or situation, do injury or damage to any property at any point along the Delaware River this defendant will make compensation for such injury or damage in such amount as may be determined by a Court of competent jurisdiction.

Thirty-sixth—This defendant in proceeding with its aforementioned plan for providing for the water supply necessities of the greatest city in the United States does so in good faith and conscience. The waters which it proposes to use constitute only a

small part of all the waters of the Delaware River which originate within the territorial confines of the State of New York. Each state which borders on this river is fairly, equitably and legally entitled to use a reasonable portion of its waters in a reasonable manner for domestic and municipal supply, which is the highest and most important use to which any water can be put. This defendant seeks neither more nor less than equality of right with the neighbors of the State of New York on the Delaware River so that it, for its necessary and proper purposes, may utilize and reasonably employ a small portion of the flood waters of that stream which, under present conditions, flow wastefully to the sea.

Wherefore, the defendant, The City of New York, prays judgment that the Bill of Complaint herein be dismissed and that it be hence dismissed with its costs and disbursements in this cause sustained and for such other and further relief to this defendant as to the Court may seem meet and proper in the premises.

THE CITY OF NEW YORK,
By ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for the Defendant,
The City of New York.

J. JOSEPH LILLY,
of Counsel.